TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~262.~~ 35

THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, OF NEW YORK, PLAINTIFF IN ERROR,

vs.

MARCUS A. WOLFF, EXECUTOR OF ELIZA GARBER, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 28, 1874.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the [SEAL.] circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the September term, 1874, thereof, between Eliza Garber, plaintiff, and the Globe Mutual Life-Insurance Company, of New York, a manifest error hath happened, to the great damage of the said Globe Mutual Life-Insurance Company, of New York, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October, 1875, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. E. Dist. Mo.,
By H. C. GEISBERG, *D. C.*

Allowed by

SAMUEL TREAT, *Judge.*

b UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a certified transcript of the record and proceedings in the within-named case, with all things concerning the same.

Witness my hand, at office in the city of St. Louis, in said district, this thirteenth day of November, A. D. 1874.

AUSTIN DRAKE, *Clerk,*
By H. C. GEISBERG, *Deputy.*

(Indorsed:) United States circuit court, eastern district of Missouri. Eliza Garber, D. E., vs. Globe Mutual Life-Ins. Company, N. Y., P. E Writ of error to the circuit court of the United States for the eastern district of Missouri. Returned and filed, , 187 . , clerk.

c The United States of America, to Eliza Garber, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October, 1875, pursuant to a writ of error filed

in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the Globe Mutual Life-Insurance of New York is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this twenty-eighth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

SAMUEL TREAT,
Judge United States Circuit Court,
Eastern District of Missouri.

d Due service of the within citation is hereby acknowledged this second day of November, A. D. 1874.

CLINE, JAMISON, & DAY,
Attorneys for Plaintiff, Eliza Garber.

(Indorsed:) United States circuit court, eastern district of Missouri. Eliza Garber, D. E., vs. Globe Mutual Life-Ins. Co., P. E. Citation. Filed , 187 . , clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, set.:

Pleas before the honorable the circuit court of the United States in and for the eastern district of Missouri, at the September term thereof, A. D. 1873.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE CO., defendant.
} Removed from the circuit court of St. Louis County.

Be it remembered that on the twenty-first day of June, in the year of our Lord one thousand eight hundred and seventy-three, there was filed in the clerk's office of said circuit court of the United States a transcript of the record and proceedings in the above-entitled case, which said transcript is in the words and figures following, to wit:

Transcript from circuit court of St. Louis County.

STATE OF MISSOURI,
County of St. Louis, ss.:

Be it remembered that heretofore, to wit, on the eleventh day of March, A. D. eighteen hundred and seventy-three, there was filed in the office of the clerk of the circuit court of the county and State aforesaid a petition, which is in the words and figures following, to wit:

Petition.

In the circuit court of St. Louis County, April term, 1873.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY.

COUNTY OF ST. LOUIS, STATE OF MO., *ss:*

2 The above-named plaintiff comes, and for petition states that she is the widow of Charles H. Garber, now deceased; that the defendant is a corporation organized and established under the laws of the State of New York, and engaged in effecting insurance, and having an agent duly authorized to transact its business in the city of St. Louis, in said county of St. Louis and State of Mo., and that the contract of insurance hereinafter mentioned was made in this State with an agent of defendant doing business in this State. And plaintiff says that the defendant did by its certain contract and policy of insurance dated November 5th, 1869, and which is herewith filed, in consideration of the sum of one hundred and thirty-four $\frac{35}{100}$ dollars to the defendant duly paid by this plaintiff, and of the annual payment of a like amount on or before the first day of November, in every year during the continuance of said policy, assure the life of the said Charles H. Garber for the sole use of this plaintiff, in the amount of five thousand dollars, for the term of his natural life, commencing November 1st, 1869, and defendant promised and agreed to pay the amount of said insurance to this plaintiff for her sole use in sixty days after due notice and proof of the death of the said Charles H. Garber. And the plaintiff says that she has at all times and the said Chas. H. Garber did during his life-time in all things comply with and perform the regulations and conditions of said policy, by them or either of them to be done or performed by the terms of said policy, and that the premiums falling due, by the terms of said policy, on November 1st of each of the years 1870, 1871, and 1872 were paid to the defendant and received and accepted by the defendant, or its duly accredited agents fully authorized in that behalf. And plaintiff states

3 that during the existence of said policy and on the 11th day of November, 1872, the said Charles H. Garber departed this life, and that thereafter, to wit, on December 1st, 1872, this plaintiff gave and caused to be given to the defendant due proof and notice of the death of the said Chas. H. Garber, and yet, though sixty days have long ago elapsed since the said proof and notice, the defendant has utterly failed and has refused to pay the said sum assured or any part thereof. Wherefore, in view of the premises, plaintiff asks for judgment against the defendant for the sum of five thousand dollars and interest thereon from February 1st, 1873, and for costs of suit.

CLINE, JAMISON & DAY,
Atts. for Plaintiff.

Upon the foregoing petition on the thirteenth day of March, A. D. eighteen hundred and seventy-three, a summons was issued, in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summon the Globe Mutual Life-Insurance Con.

pany to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the first Monday of April next, then and there to answer the complaint of Eliza Garber as set forth in the annexed petition, and have you then and there this writ.

Witness John Lewis, clerk of our said court, with the seal thereof hereto affixed at office in the city of St. Louis this 13th day of March, in the year of our Lord eighteen hundred and seventy-three.

JOHN LEWIS,
Clerk. [SEAL.]

Upon which said summons the sheriff made the following return, to wit:

Executed this writ in St. Louis County on the 15th day of March, 1873, by delivering a copy of the writ and petition as furnished by the clerk to Wm. A. Brawner, agent of the Globe Mutual Life Insurance Company. The president cannot be found in my county.

PHILIP O. TAYLOR,
Sheriff.

By P. BISCHOFF, *Dpt.*

Serv. $1.00.

And afterwards, to wit, at a special term of said circuit court, being the April term A. D. 1873, and on the respective days hereinafter named, the following further proceedings were had in this cause, to wit:

WEDNESDAY, *April 9th*, 1873.

ELIZA GARBER
vs.
THE GLOBE MUTUAL LIFE INSURANCE COMPANY.

Petition for removal of cause to United States circuit court filed, which said petition is in the words and figures following, to wit:

Petition for removal of cause to U. S. circuit court.

In circuit court St. Louis County, State of Missouri, room No. 3. Petition for removal.

ELIZA GARBER, *Plff.*
vs.
THE GLOBE MUTUAL LIFE INSURANCE CO., *Deft.* } No. 24984.

Now comes the said defendant and enters its appearance in the above-entitled cause, and respectfully states to the court that the said Globe Mutual Life Insurance Company is a corporation organized and existing under and by the laws of the State of New York, and is a citizen of said last-named State; that the plaintiff is a citizen of the State of Louisiana, and that the amount in controversy in the above-entitled cause exceeds the sum of five hundred dollars, exclusive of costs. Wherefore defendant prays the court to grant an order removing said cause to the next circuit court of the United States to be holden in and for the eastern district of Missouri.

JOHN W. NOBLE,
Atty. for Deft.

STATE OF MISSOURI,
County of St. Louis, ss:

William A. Brawner, being first duly sworn, on his oath states that he is the general agent of the defendant, the Globe Mutual Life-Insurance Company, and that the matters and things stated in the foregoing petition are true, as he verily believes.

WM. A. BRAWNER.

Subscribed and sworn to before me this 8th day of April, 1873, as witness my hand and seal notarial.

[SEAL.] W. J. SHARMAN,
Notary Public.

Petition for removal heard and granted.

SATURDAY, *April 26th*, 1873.

ELIZA GARBER
vs.
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY.

Now comes the defendant, by its attorneys, and having filed a petition herein for the removal of this cause to the circuit court of the United States for the districts of Missouri, which having been heard and fully considered by the court, it is ordered that on the defendant's filing herein a good and sufficient bond in the sum of five hundred dollars, to be approved by the court, the clerk of this court certify to the United States circuit court for the districts of Missouri a full, true, and complete transcript of the record and proceedings in this cause forthwith.

Bond filed.

Bond filed and approved.
Said bond is in the words and figures following, to wit:

Bond.

In the circuit court of St. Louis County, State of Missouri.

ELIZA GARBER, PLFF.,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE CO., DFT.

6 We, Wm. A. Brawner, as principal, and N. B. Weed, as surety, are held and firmly bound unto Eliza Garber in the penal sum of five hundred dollars lawful money of the United States, to be paid to the said Eliza Garber, for which payment well and truly to be made we hereby bind ourselves, our heirs, executors, and assigns, firmly by these presents, dated, signed, and sealed this 26th day of April, A. D. 1873.

The condition of this obligation is such, however, that whereas a certain suit was brought in the circuit court of St. Louis County, State of Missouri, to the April term, A. D. 1872, of said court, being case No. 24984, wherein Eliza Garber is plaintiff and the Globe Mutual Life-Insurance Company of New York is defendant, and is now pending in said court; and whereas in pursuance of the act of Congress in such cases made and provided the said defendant has filed its petition in

said circuit court of St. Louis County, praying that the said cause be removed to the next circuit court of the United States to be holden in and for the eastern district of Missouri:

Now, therefore, the condition of this obligation is such that if the said defendant, The Globe Mutual Life-Insurance Company, shall enter, or cause to be entered, in the circuit court of the United States in and for the eastern district of Missouri, on the first day of its stated term next ensuing after the order of the said circuit court of St. Louis County removing the said cause into the said United States circuit court, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and do, or cause to be done, such other appropriate acts as by the said acts of Congress are required to be done upon a removal of a suit into the circuit court of the United States, then this obligation shall be null, and otherwise in full force and effect.

WM. A. BRAWNER.
N. B. WEED.

7 Approved in open court April 26th, 1873.

JOHN LEWIS, *Clk.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, John Lewis, clerk of the circuit court within and for the county and State aforesaid, do hereby the above and foregoing to be a full, true, and complete transcript of the record and proceedings in the cause wherein Eliza Garber is plaintiff and the Globe Mutual Life-Insurance Company is defendant, as fully and wholly as the same remains of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at St. Louis, this tenth day of June, A. D. 1873.

JOHN LEWIS, *Clerk.* [SEAL.]

And at a regular stated term of the circuit court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the third Monday, the fifteenth day, of September, A. D. 1873, the following proceedings were had in said case, to wit:

Appearance of deft. entered & leave to plead given.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INS. CO., DEFENDANT.
} No. 138. Removed from circuit court of St. Louis County.

This day comes the defendant, by its attorney, John W. Noble, esquire, and enters its appearance herein, and on motion of said attorney leave is granted said defendant to plead herein on or before the twentieth instant.

And afterwards, to wit, on the twentieth day of September, in said last-mentioned year, there was filed in the clerk's office of said circuit an answer herein, which said answer is in the words and figures following, to wit:

8 *Answer.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States, in and for said eastern district.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, defendant.

And now comes the defendant, The Globe Mutual Life-Insurance Company, and by leave of court files this its answer to plaintiff's petition, and denies that the plaintiff at all times, or said Charles H. Garber did, during his life-time, in all things comply with or perform the regulations or conditions of said policy by them, or either of them, to be performed, as alleged. And defendant denies that the premiums falling due by the terms of said policy, on November 1st of each of the years named, and particularly the year 1872, were paid as alleged, or accepted and received as alleged. And defendant says the premium due November 1st, 1872, was not paid when the same became due to this defendant, or unto any agent of this defendant authorized to receive the same; and this defendant further says that said policy of this defendant set forth with said petition, and to which reference is hereby made as the same remains on file, was issued and accepted by the assured upon the following, among other express conditions and agreements, to wit: If said premiums (meaning the several premiums mentioned in plaintiff's petition, and to be paid under said policy on the first day of November in every year during the continuance of said policy) should not be paid on or before the days above mentioned for the payment thereof, at the office of the company in the city of New York, (unless otherwise
9 expressly agreed in writing,) or to agents when they produce receipts signed by the president, vice-president, or secretary, then in every such case the said company shall not be liable for the sum assured, or any part thereof, and said policy should cease and determine, and also that agents of the company were not authorized to make, alter, or discharge contracts or waive forfeitures.

And defendant says that said annual premium due November 1st, 1872, was not paid on or before said day mentioned as in said policy required, and that thereupon, and on failure to pay said premium as required on said day, said policy did by its terms cease and determine.

And defendant says that at the time of the death of the said Charles H. Garber, as alleged, said policy was not in force, but had ceased and determined as aforesaid, and plaintiff ought not, for anything in said petition contained, to have and maintain her action against defendant.

And for a further defence in this behalf, this defendant further says that said policy was issued and accepted by the assured upon the following, among other express conditions and agreements, to wit: that if the said person whose life was thereby insured should, between the first of July and the first of November, reside in those parts of the United States which lie south of the 33rd degree of north latitude, excepting California, without the consent of defendant previously given in writing, then said policy should be null and void; and also, that agents of the company were not authorized to make, alter, and discharge contracts or waive forfeitures.

And defendant says that said Charles H. Garber, the person named in said policy and in plaintiff's petition, between the first day of July and the first of November, A. D 1872, to wit, during all the period from July 1st to November 1st, 1872, did, without the consent of
10 said company previously given in writing, reside in that part of the United States which lies south of the 33rd degree of north latitude, other than California, that is to say, at the city of New Orleans, in the State of Louisiana. Whereby, as defendant says, said policy then and there before said Charles H. Garber's death became null and void. Wherefore, as defendant says, plaintiff ought not to have and maintain her said action against defendant. And defendant denies plaintiff gave, or caused to be given, notice and proof of the death of said Charles H. Garber as alleged. Wherefore defendant having fully answered, asks to be hence dismissed with costs in this behalf expended.

JOHN W. NOBLE,
Atty. for Defendant.

And afterwards, to wit, at said last-mentioned regular and stated term of said circuit court begun and holden as aforesaid, the following further proceedings were had in said case on Tuesday, the 23rd day of September, A. D. 1873, to wit:

Reply filed.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE CO., DEFENDANT. } No. 138.

Removed from circuit court of St. Louis County.

This day comes the plaintiff, by her attorney, and files her reply to the answer of said defendant; which said reply so filed as aforesaid is in the words and figures following, to wit:

Reply.

In the United States circuit court for the eastern district of Missouri

ELIZA GARBER
vs.
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY. }

Plaintiff comes, and for reply to the defendant's answer says
11 as follows: Plaintiff admits that the premium for the year 1872 was not paid until after the 1st day of November, 1872, but plaintiff says that when said premium was paid to the defendant it delivered to plaintiff a receipt therefor, duly signed by the secretary of said company; that the parties delivering said receipt were fully authorized so to do by the defendant, and to receive the said premium, even though the said first day of November had already elapsed. And the defendant, by its course of dealing with its agents and with the said Charles H. Garber and this plaintiff, prior to the payment of said premium, had authorized the said premium to be paid and its agents to receive the same after it was due, and had by its conduct authorized

this plaintiff and said Chas. H. Garber to believe that it would be so received. And the defendant, by receiving and accepting premiums on said policy for previous years, after they were payable under the terms of said policy, had waived any right it may otherwise have had to enforce a strict compliance with the terms of said policy as to the time of payment of premiums.

And plaintiff further says that the said premium for 1872 was not only received by agents of defendant duly authorized thereto, but was actually received and accepted by the said defendant with full knowledge of the fact that it had been paid after said November 1st, and also that the said agents of the defendant were authorized to waive forfeitures of its policies. And plaintiff further says that true it is that the said Charles H. Garber did, between the 1st of July and the 1st of November, 1872, reside south of the 33rd degree of north latitude in said New Orleans, but plaintiff avers that the defendant well knew that the said Charles H. Garber did reside during the said period of the year between July 1st & Nov. 1st south of the said 33rd degree when it issued
12 the said policy to the said Charles H. Garber, and with full knowledge of such fact received not only the premiums on said policy for previous years, but also the said premium for Nov. 1st, 1872, and that said facts were well known to the agents of said defendant who collected said premiums & who were authorized to waive forfeitures, both expressly and by reason of the course of dealing between defendant and its said agents, and defendant had so acted toward said Charles H. Garber and this plaintiff as to lead and induce them to believe that said agents had power to waive forfeitures.

And plaintiff further says that at the time when the said Charles H. Garber died he was authorized by said policy to reside south of the said 33rd degree, and that his death was in no way caused, occasioned, promoted, or brought about by reason of his having resided at any time south of the said 33rd degree of north latitude between the said first day of July & the 1st of November of that year, or any year prior thereto. And so plaintiff asks judgment as prayed for in her petition and ten per cent. damages on the amount of said policy by reason of the vexatious and wilful delay on the part of defendant in paying the amount due her on said policy.

CLINE, JAMISON & DAY,
Attorneys for Plaintiff.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Tuesday, the 31st day of March, A. D. 1874, to wit:

Case called—Jury ordered—Case heard in part.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE CO., DEFENDANT.
} No. 138. Removed from circuit court of St. Louis County.

This day come the parties, by their respective attorneys, the
13 plaintiff by George W. Cline and Melville C. Day, esquires, and the defendant by John W. Noble and Daniel T. Potter, esquires; and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come, and thereupon comes said jury, to

wit, R. H. Betts, Francis Ferrier, William Dowell, D. C. Thacher, A. T. Kennedy, William H. Finch, Peter Conrad, Adolphus Heinicke, John Johnson, George W. Smith, John H. Steers, and N. S. Dimmitt, twelve good and lawful men, who were sworn well and truly to try the issues joined herein. Thereupon the hearing of the evidence was proceeded with, but not having been concluded at the hour of adjournment it is ordered that further proceedings be continued until to-morrow morning.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Wednesday, the 1st day of April, in said last-mentioned year, to wit:

Case further heard & argued.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE COMPANY, N. Y., defendant.
} No. 138. Removed from circuit court of St. Louis Co.

This day come again the parties by their respective attorneys, as on yesterday, and the jury sworn herein being also present, the hearing of the evidence was resumed, and at the conclusion thereof the case was argued by counsel and submitted to said jury after they had received instructions from the court as to the law. Thereupon said jury retired for consultation as to their verdict, and afterwards returned into court the following verdict, to wit:

Verdict.

ELIZA GARBER
vs.
GLOBE MUT. LIFE-INS. CO.

We, the jury, find for plaintiff in the amount of five thousand three hundred and sixty-four $\frac{16}{100}$ dollars, ($5,364.16.)

ROBT. H. BETTS,
Foreman.

Judgment.

14 It is therefore now considered by the court that the plaintiff, Eliza Garber, recover against the defendant, The Globe Mutual Life-Insurance Company of New York, the sum of five thousand three hundred sixty-four dollars and sixteen cents, ($5,364.16,) the damages so as aforesaid by the jury assessed, and also the costs in this behalf expended, and that execution be issued therefor.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Thursday, the 2nd day of April, in said last-mentioned year, to wit:

Motion for new trial filed.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE CO., DEFENDANT.
} No. 138. Removed from circuit court of St. Louis Co.

This day comes the defendant by its attorney, and files a motion that

a new trial be granted to it for the reasons set forth in said motion; which said motion so filed as aforesaid is in the words and figures following, to wit:

Motion for new trial.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States in and for said eastern district of Missouri. March T., 1874.

ELIZA GARBER, PLAINTIFF, *vs.* THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, defendant.	Action on policy of insurance removed from St. Louis County circuit court, Mo.

The defendant, The Globe Mutual Life-Insurance Company, comes now by its attorneys and moves the court to set aside the verdict rendered, and for a new trial in this cause for the reasons following:

15 1. Because the verdict is against the evidence.
2. Because the verdict is against the law.
3. Because the verdict is against the instructions of the court.
4. Because the verdict is against the law and the evidence.
5. Because the court erred in admitting illegal testimony, offered by plaintiff, against the objection of defendant.
6. Because the court erred in excluding legal testimony, offered by defendant, on motion of plaintiff and on its own motion.
7. Because the court erred in refusing instruction & declaration of law asked by defendant at close of the plaintiff's case.
8. Because the verdict is for the wrong party, & should have been for defendant.
9. Because the damages are excessive.

NOBLE & ORRICK & POTTER,
Attys. for Deft.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Monday, the 20th day of April, in said last-mentioned year, to wit:

Verdict and judgment set aside and new trial granted.

ELIZA GARBER, PLAINTIFF, *vs.* GLOBE MUTUAL LIFE-INSURANCE CO., DEFENDANT.	No. 138. Removed from circuit court of St. Louis County.

This day come the parties by their respective attorneys, the plaintiff by Melville C. Day, esquire, and the defendant by John W. Noble, esquire, and thereupon the motion to grant a new trial herein was argued by said attorneys and submitted, and, the court being fully advised in the premises, it is ordered that the verdict of the jury herein and the judgment rendered thereon at a former day of this term be, and the same are now hereby, set aside, and that a new trial be
16 granted at the next term, until which time this case is now ordered to be continued.

And afterwards, to wit, at a regular stated term of said circuit court, begun and holden at the city of St. Louis, in said district, on Monday, the 21st day of September, A. D. 1874, the following further proceedings were had in said case, on Saturday, the 3rd day of October, in said last-mentioned year, to wit:

Case called.—Jury ordered.—Case heard in part.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE COMPANY of New York, defendant.
} No. 138. Removed from circuit court of St. Louis County.

This day come the parties by their respective attorneys, the plaintiff by Messrs. George W. Cline and Melville C. Day, and the defendant by John W. Noble, esquire, and this case being regularly called for trial, and both parties announcing themselves as ready, on motion of said attorneys, it is ordered that a jury come; whereupon comes said jury, to wit: W. H. Concannon, A. L. Gibbs, John W. Gill, A. Duff, William Worsham, James A. Jackson, George M. Sweeney, Robert K. Holcomb, Joseph L. Johnson, Thomas Z. Elliott, Robert E. Stowe, and Middleton Smoot, twelve good and lawful men, who were sworn well and truly to try the issues herein joined. Thereupon the hearing of the evidence was proceeded with, and the same having been concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until Monday morning next.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Monday, the 5th day of October, in said year, to wit:

17 *Case heard and submitted.*

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE INSURANCE CO., DEFENDANT.
} No. 138. Removed from circuit court of St. Louis County.

This day come again the parties by their respective attorneys, as on Saturday last, and the jury sworn herein being present, the case was argued by counsel and submitted to said jury, who, after receiving the charge of the court, retired for consultation, and afterwards returned the following verdict, to wit:

Verdict.

ST. LOUIS, *Oct.* 5, 1874.

ELIZA GARBER
v.
GLOBE MUT. LIFE-INS. CO.

We, the jurors, find for the plaintiff the sum of five thousand five hundred dollars.

MIDDLETON SMOOT, *Foreman.*

Judgment.

It is, therefore, now considered by the court, that the plaintiff, Eliza Garber, recover against the defendant, the Globe Mutual Life-Insurance Company of New York, the sum of ($5,500.00) five thousand five hundred dollars, the damages so as aforesaid by the jury assessed, and also the costs herein expended, and that execution be issued therefor.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Tuesday, the 6th day of October, in said last-mentioned year, to wit:

Motion to set aside verdict & grant new trial filed.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE CO., DEFENDANT. } No. 138. Removed from circuit court of St. Louis County.

This day comes the defendant by its attorney, and files a motion to set aside the verdict of the jury and grant a new trial, for the reasons set forth in said motion; which said motion, so filed as aforesaid, is in the words and figures following, to wit:

18 *Motion to set aside verdict & grant new trial.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States, in and for said eastern district of Missouri.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, DEFENDANT. } Civil action on policy of life insurance removed from St. Louis County circuit court, Mo.

The defendant, The Globe Mutual Life-Insurance Company, comes now by its attorneys, and moves the court to set aside the verdict rendered, and to grant a new trial in this cause, for the reasons following:

1. Because the verdict is against the evidence.
2. Because the verdict is against the weight of the evidence.
3. Because the verdict is against the law.
4. Because the court erred in its charge & instructions to the jury.
5. Because the court gave propositions of law to jury that were erroneous & against the objections of the defendant.
6. Because the court refused to give propositions of law to the jury requested by the defendant, & which were relative & material to a fair trial of the cause.
7. Because the court refused to grant the instruction to the jury asked by the defendant at the close of the plaintiff's case.
8. Because the court erred in admitting illegal testimony, offered by plaintiff, against the objection of defendant.
9. Because the court erred in excluding legal testimony, offered by the defendant, on motion of plaintiff & on its own motion.

10. Because the verdict is for the wrong party, and should have been for the defendant.

19 11. Because the damages are excessive.

NOBLE & ORRICK,
Attys. for Deft.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Wednesday, the 7th day of October, in said last-mentioned year, to wit:

Motion overruled.—Motion to arrest judgment filed and overruled.

ELIZA GARBER, PLAINTIFF, *vs.* GLOBE MUTUAL LIFE-INSURANCE CO., DEFT. } No. 138. Removed from circuit court of St. Louis County.

This day comes said defendant, by its attorney, and the court having considered the motion heretofore filed to set aside the verdict and grant a new trial herein, and being fully advised in the premises, it is ordered that said motion be overruled. Thereupon said defendant, by its attorney, files a motion to arrest the judgment hereinbefore rendered, for the reasons set forth in said motion, and said motion having been submitted to the court, it is ordered that the same be overruled; which said motion, so filed as aforesaid, is in the words and figures following, to wit:

Motion to arrest judgment.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in & for said eastern district.

ELIZA GARBER, PLFF., *vs.* THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, defendant. } Civil action. Removed from St. Louis circuit court, Mo.

And now comes the defendant, The Globe Mutual Life-Insurance Company, and moves the court to arrest the judgment in this cause for the reasons following:

20 1. That upon the record said judgment is erroneous.

2. That the petition does not state facts sufficient to constitute a cause of action against the defendant.

3. That the reply does not state facts sufficient to constitute a confession or avoidance or other legal reply to the answer of the defendant.

4. The verdict of the jury is not responsive to the issues made in the pleadings.

5. The verdict is not such as to enable judgment to be rendered thereon.

6. On the record any judgment rendered should be for the defendant.

NOBLE & ORRICK,
Attys. for Deft.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Friday, the 9th day of October, in said last-mentioned year, to wit:

Bill of exceptions filed.

ELIZA GARBER, PLAINTIFF,
v.
GLOBE MUTUAL LIFE-INSURANCE COMPANY of New York, defendant.

No. 138. Removed from circuit court of St. Louis County.

This day comes the defendant, by its attorney, and presents its bill of exceptions in this case, which, being examined, is signed by the presiding judge and ordered to be filed and made a part of the record herein; which said bill of exceptions, so signed and filed herein, is in the words and figures following, to wit:

21 *Bill of exceptions.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in & for said eastern district of Missouri.

ELIZA GARBER, PLAINTIFF,
against
THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, defendant.

Be it remembered that on this the third day of October, A. D. 1874, this cause coming on to be heard before a jury, and the parties being present with their respective attorneys, and the jury having been duly empanelled and sworn, the plaintiff, to maintain the issue on her part to be maintained, did offer and introduce in evidence the policy of life-insurance sued on, which was in words and figures following, to wit:

Policy.

$5,000.] [$5,000.

THE GLOBE MUTUAL LIFE-INSURANCE COMPANY, NEW YORK.

Age, 35 years. Number 17577, with profits. Premium, 134.35, payable November 1, with profits.

PLINY FREEMAN, *Prest.*
LORING ANDREWS, *Vice-Pres.*
JOHN A. HARDENBERGH, *2nd Vice-Pres.*
HENRY C. FREEMAN, *Sec'y.*

In consideration of the representations made to them in the application for this policy, and of the sum of one hundred and thirty-four dollars and thirty-five cents, to them duly paid by Eliza Garber, wife of Charles H. Garber, and of the annual payment of a like amount on or

before the first day of November in every year during the continuance of this policy, do assure the life of Charles H. Garber, of St. Louis, in the county of St. Louis, State of Missouri, for the sole use of his said wife, in the amount of five thousand dollars, for the term of his natural life, commencing November 1, 1869. And the said company do hereby promise and agree to pay the amount of the said insurance at their office in the city of New York, to the said assured wife, for her sole use, if living, in conformity with the statute, and, if not living, to her children, or their guardian, (except as hereinafter provided,) for their use, in sixty days after due notice and proof of the death of the said party whose life is hereby insured, the balance of the year's premium, if any, being first deducted therefrom. It is, however, agreed that in case of the decease of the wife during the life-time of the assured, that the said assured may, at his option, substitute any other beneficiary under this policy. This policy is issued and accepted by the assured upon the following express conditions and agreements:

1st. The assured is permitted to reside in any part of North America, north of 33rd degree of north latitude, and in California and Europe, at all seasons of the year, and to make voyages as passenger to and from said countries; also, to make an occasional visit to those other parts of the U. S. which lie south of the 33rd degree of north latitude at any season of the year; also, to reside therein, except between the first day of July and the first day of November in each year.

2nd. If the said person, whose life is hereby assured, shall pass beyond the above-mentioned limits, or between the first of July and the of November shall reside in those parts of the United States which both of the 33rd degree of north latitude, excepting California, or be personally engaged in blasting, mining, submarine operations, the production of highly inflammable or explosive substances, or working or managing a steam-engine in any capacity, or as a mariner, engineer, fireman, conductor or laborer, in any capacity, upon service on any sea, sound, inlet, river, lake, or railroad-trains, or enter any military or naval service whatsoever, (excepting into the militia when not in actual service,) without the consent of this company, in each and every of the foregoing cases, previously given in writing; or if he shall die in, or in consequence of, a duel, or whilst engaged in, or in consequence of, the violation of the laws, civil or military, of any nation, State, or province; or if any of the statements or declarations made in the application for this policy, upon the faith of which this policy is issued, and which are to be deemed a part hereof, shall be found in any respect untrue, then and in every such case this policy shall be null and void.

3rd. If the said premiums shall not be paid on or before the days above mentioned for the payment thereof, at the office of the company, in the city of New York, (unless otherwise expressly agreed in writing,) or to agents when they produce receipts signed by the president, vice-president, or secretary, then in every such case the said company shall not be liable for the sum assured, or any part thereof, and this policy shall cease and determine. Nor shall this policy take effect or be in force until the first premium is actually paid, and no agent of this company has power or authority to deliver this policy until such actual payment.

4th. In every case when this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company, except as hereinafter provided.

5th. In case of the death of the said assured in or in consequence of a duel or a battle, during the continuance of this policy, the company will

pay to the beneficiary under this policy the whole amount of premiums which shall have been received by the company thereon in sixty days after due notice and proof of death.

6th. In case this policy shall be assigned or held as security, written notice thereof must be given to this company, and due proof of interest produced with the proofs of death. On payment of the policy to an assignee, the original assignment, duly proved or acknowledged, is to be surrendered to and left with the company.

7th. If, after the receipt by this company of not less than three annual premiums on this policy, the same should cease in consequence of a default in the payment of premiums thereon, then, upon a surrender of this policy, (within twelve months from the time of such default,) a paid-up policy will be issued for the whole amount of premiums received by the company on this policy, provided the age of the party assured does not at this time exceed 50 years, in which case the new policy to be issued shall be for the amount of the reversionary value of this policy, according to the reversionary table of the company.

8th. All receipts for premiums are to be signed either by the president, vice-president, or secretary.

9th. Agents of the company are not authorized to make, alter, or discharge contracts, or waive forfeitures.

In witness whereof the said Globe Mutual Life-Insurance Company have, by their president, vice-president, and secretary, signed and delivered this contract, this fifth day of November, one thousand eight hundred and sixty-nine.

LORING ANDREWS,
Vice-President.
H. C. FREEMAN, *Secretary.*
JNO. A. HARDENBERGH,
2 *Vice-President.*

Examined. A. B. M.
[50-c. stp.]

Proof of loss.

And to further sustain the issue on her part, did offer and introduce in evidence the proofs of loss under said policy.

24¼ *Certificate No.* 1.—*Proof from claimant.*

Notice is hereby given to the Globe Mutual Life-Insurance Co. of New York, that Charles H. Garber, of the city of New Orleans, county of Orleans, and State of Louisiana, has died; that said Charles H. Garber was the same person whose life was assured by said company by their policy No. 17557, dated fifth day of November, 1869, for the sum of five thousand dollars; that all premiums had been duly paid upon said policy; that the undersigned is the legal owner of said policy; that the undersigned had a good and valid interest to the amount assured in the life of said deceased, and in proof of claim under said policy does answer as follows:

1. Name of deceased.—Charles H. Garber.
2. Residence.—City of New Orleans, Louisiana.
3. Occupation at date of assurance.—Marble dealer.
4. Occupation since assurance was effected.—The same.
5. Place and date of birth.—Montgomery County, State of Pennsylvania; 15th September, 1834.

6. Place and date of death.—565 Carondelet street, city of New Orleans, November 11th, 1872.

7. How long had you known deceased?—About five years.

8. State all facts regarding cause and circumstances of death.—He had been complaining for more than a month, but did not think it serious. He became seriously sick within the last five days preceding his death.

9. Did the deceased during the term of assurance reside outside the limits allowed by the policy? If so, when and where?—He did not.

10. Had the deceased, during the existence of the policy, been engaged in any military or naval service? Or did he die by his own hand? Or in, or in consequence of, a duel, or the violation of any law?—He did not.

11. Refer to the policy, and state if, to your knowledge and belief, the deceased complied with the terms contained therein.—He did.

12. Is the assurance claimed under assignment?—No.

13. If so, by whom was the policy assigned?

14. Was the assignment made for a good and valuable consideration?

Dated at New Orleans this sixteenth day of November, 1872.

ELIZA GARBER,
Widow of Deceased.

STATE OF LOUISIANA,
County of Orleans, ss:

On this sixteenth day of November, 1872, personally appeared before me the above-named Eliza Garber, to me known, and made oath that the foregoing statements by her made are true and full, to the best of her knowledge, recollection, and belief.

[SEAL.]

ROBERT I. KER,
U. States Commissioner.

☞ Certificate of county clerk must in all cases be obtained that the person administering the oath was duly authorized for that purpose.

Certificate No. 2.—Proof from medical attendant.

1. Name of deceased.—Charles H. Garber.

2. Occupation.—Marble dealer.

3. Residence.—No. 565 Carondelet street, city of New Orleans.

4. How long had you been acquainted with the deceased?—About three or four months.

5. Were you his attending physician before his last sickness? If so, for what disease and when?—I was not.

6. Was the deceased afflicted with any chronic disease? If so, how long?—He was not.

7. Were you his attending physician during his last sickness, and up to the time of his death?—I was.

8. Date of first visit.—November seventh, 1872.

9. Date of last visit.—November 11th, at about 10 o'clock a. m.

10. Date of death.—11th November, 1872, ½ past 11 o'clock a. m.

11. State the disease of which the deceased died, and any important medical facts connected therewith.—He died of yellow fever.

12. Was the deceased strictly temperate?—I do not know anything of his habits.

13. Was there any special cause, remote or proximate, for the death in the habits, occupation, residence, family history, personal constitution, or previous disease of the deceased?—There was nothing but the sickness of which he died, to wit, yellow fever.

14. Have you stated all the material facts relating to the sickness of the deceased?—I have.

15. State real or apparent age of the deceased.—Apparently about 40 or 45 years.

Dated at New Orleans, this sixteenth day of November, 1872.

ALFRED W. PERRY, M. D.,
Attending Physician.

STATE OF LOUISIANA
County of Orleans, ss:

On this sixteenth day of November, 1872, before me came the above-named Alfred W. Perry, M. D., known to me as a physician in regular standing, and made oath that the answers by him given to the foregoing questions are true and full, to the best of his knowledge and belief.

[SEAL.] ROBERT I. KER,
United States Commissioner.

☞Certificate of the county clerk must in all cases be obtained that the person administering the oath was duly authorized for that purpose.

24½ *Certificate No. 3.—Proof from sexton or undertaker.*

1. Name of deceased.—Charles H. Garber.
2. Residence.—City of New Orleans, La., No. 565 Carondelet street.
3. Occupation.—Marble dealer.
4. Did you inter the body of said deceased, and do you know that it was the body of the person described in the accompanying statement of the claimant in this case?—I did. It was the same person.
5. Date of birth.—I do not know.
6. Age at death.—I do not know.
7. Cause of death.—I do not know of my personal knowledge.
8. Place and date of death.—At 565 Carondelet street, New Orleans. I do not remember exact date.
9. Place and date of interment.—Washington Cemetery; Nov. 12th, 1872.

Dated at New Orleans this eighteenth day of November, 1872.

C. C. JONES,
Undertaker.

STATE OF LOUISIANA,
County of Orleans, ss:

On this eighteenth day of November, 1872, personally appeared before me the above-named C. C. Jones, to me known, and made oath that the foregoing statements by him made are true and full to the best of his knowledge, recollection, and belief.

[SEAL.] ROBERT I. KER,
United States Commissioner, District of Louisiana.

☞Certificate of county clerk must in all cases be obtained that the person administering the oath was duly authorized for that purpose.

Certificate No. 4.—Friend's proof of identity.

1. Name of deceased.—Charles H. Garber.
2. How long had you known deceased?—More than twenty years.
3. Place and date of death.—565 Carondelet street, New Orleans; 11th November, 1872.

4. Age of deceased at death.—About thirty-eight years.

5. Have you seen the remains or body of the person deceased, and is it, to your knowledge, the same person described in the before-named policy of insurance?—I have. It is the same person.

6. State all the facts within your knowledge relating to the cause of death.—The deceased had invariably healthy up to the time of his last sickness.

7. Was the deceased in the habit of using spirituous liquors? If so, did it affect his health?—He was not. He made only a moderate use, and his health was not affected therefrom.

8. Are there any circumstances within your knowledge, information, or belief, or have any facts come to your knowledge inconsistent with the statements hereto attached, made by the claimant and attending physician in this case? If so, state them fully.—There are none.

9. Has the deceased violated any of the conditions of said policy of insurance?—None that I know of.

Dated at New Orleans this eighteenth day of November, 1872.

FLR. FOY,
Friend of the Deceased.

STATE OF LOUISIANA,
County of Orleans, ss:

On this eighteenth day of November, 1872, personally appeared before me the above-named Florville Foy, to me known, and made oath that the foregoing statements by him made are true and full to the best of his knowledge, recollection, and belief.

[SEAL.] ROBERT I. KER,
United States Commissioner, District of Louisiana.

☞ Certificate of county clerk must in all cases be obtained that the person administering the oath was duly authorized for that purpose.

Certificate No. 5.—Proof from minister or other party who officiated at the interment of the deceased.

STATE OF LOUISIANA,
County of Orleans, ss:

Revd. S. S. Harris, of the city of New Orleans, being duly sworn, deposes and says that he is the minister of Trinity church at the city of New Orleans, and that he was not personally acquainted with the late Charles Garber, of the city of New Orleans, in his life-time, now deceased, but he believes that said Charles Garber was interred in the burial-ground known as Washington Cemetery on the twelfth day of November, A. D. 1872, and that he, as such minister, officiated at such interment.

[SEAL.] SAMUEL S. HARRIS.

Subscribed and sworn before me this twenty-first day of November, A. D. 1872.

[SEAL.] ROBERT I. KER,
U. States Commissioner.

☞ Certificate of county clerk must in all cases be obtained that the person administering the oath was duly authorized for that purpose.

Note.

1. When the beneficiary under a policy is a minor, proof of the appointment of the guardian must be furnished before the claim will be allowed.

2. When the beneficiary under a policy is dead, (as in the case of a policy in favor of the very person whose life is assured,) a certificate will be required from the proper court to show who is authorized to act as administrator or executor of such deceased beneficiary.

3. When a policy has been assigned, the original assignment, or a properly authenticated copy thereof, must be presented with proofs of death.

4. When a policy payable by its terms to one beneficiary, if surviving, has, by the death of such beneficiary, become payable to another, proof of the death of such first beneficiary must be furnished by affidavit of respectable persons well acquainted with such deceased beneficiary.

5. When a policy is payable to the children in general of the person, or to any other class of persons whose names are not separately mentioned in the policy, proof must be furnished of how many children there are, or of how many the class consists, and the names and ages of the persons given. If any are minors, proof of the appointment of the guardian must be furnished.

6. And in general, when the policy or the death is peculiar in any respect, the forms of proof and claim must be adapted to the peculiar circumstances of the case.

(Indorsed:)

Life assured, C. H. Garber. Policy No. 17557. Amount, 5,000. Favor of wife, Eliza. Premium paid to 4 y'rs to Nov. 1, '72. (See letter herewith.) Date of death, Nov. 11th, 1872. Balance of year's premium . Dividends . Agent, W. A. Brawner. This blank to be filled out at chief office only.

Loss, No. ; policy, No. 17557. Charles H. Garber. Received Novem'r 29, 1872. Proofs completed, 187 . Examined and claim approved for $, , 187 . , , , Loss committee. Amount of policy, $; amount of additions, ; less balance of year's premium, .; amount due, 187 ; cheque to order of account N. B. Weed, B. B. This blank to be filled out at chief office only.

25 *Testimony of John Devine.*

And further to maintain said issue on her part, did call as a witness John Devine, who, being duly sworn, testified as follows:

My name is John Devine; residence, St. Louis. During the period between July, 1871, and May, 1873, I was employed by the defendant as office-boy and collector at St. Louis, Missouri. I collected premiums and renewal receipts that came due on the policies of the policy-holders. When they came due I took them out to the business places of the policy-holders for the purpose of collecting. Sometimes I took them after they were due. If the parties paid after they were due I received the money and gave them their receipts. I was entrusted with some renewal receipts after they were due.

(Here the following question was propounded by the plaintiff's attorneys:)

I will ask you, in these cases where you were intrusted with the re-

newal receipts for premiums after they were due, whether you had any instructions from the company or from the agents of the company in reference to inquiring as to the health of the parties against whom the premiums were claimed?

To which question the defendant, by its attorney, objected, on the ground that the testimony to be adduced would be incompetent and irrelevant, and said question was incompetent and irrelevant. And the court overruled the objection; to which action of the court in overruling said objection the defendant, by its attorney, then and there excepted.

Witness answered: Not any; as a general thing I had no inquiries to make in regard to the health of the parties I collected premiums from after they were due.

Witness further testified: I received premiums during absence of the manager or cashier by their authority. The renewal receipts were
26 kept at the office in the safe. In regard to the premium on the policy sued on, due November 1, 1872, Mr. Warne came there to pay it on the morning of eleventh November, between ½ past 8 and ½ past 9 o'clock, before the cashier, Mr. Weed, or Mr. Brawner, the manager, had got down to the office. He wanted to pay Charles H. Garber's premium. I got the renewal receipt out and went with Mr. Warne to Marcus A. Wolfe's office, and there received the money and gave Mr. Warne the receipt. When Mr. Weed came down to the office I paid it to him. He received it and said it was all right, as far as I remember. The receipt here now shown me is the receipt. Mr. Brawner and Mr. Weed had supervision of collecting premiums. Mr. Weed had charge of the renewals. They both had general charge.

No cross-examination.

Testimony of Edgar Warne.

And further to maintain the issue on her part, the plaintiff called as witness Edgar Warne, who, being duly sworn, testified as follows:

I know the plaintiff; have for some years; I paid the premium in question. I went to the office of the defendant in St. Louis about eight. I went away & returned and saw witness, John Devine, and told him I wanted to pay the premium on Mr. Garber's life. We went around on Chesnut street and I paid him the money & he gave me the receipt. There were no questions asked as to the health of Mr. Garber at that time. I got a telegraphic despatch on Sunday from Mrs. Garber to go and pay the premium, and I went and paid it on Monday morning. I told the boy that Mr. Garber was in New Orleans. I tore that dispatch up.

On cross-examination witness further testified: I tore the dispatch up. I gave the receipt to Mr. Wolfe to put in his safe. I proba-
27 bly gave the receipt up in two or three months after I got it. It was my money I paid. I don't know when that receipt came into hands of Mrs. Garber exactly. I gave it to Mr. Wolfe and told him to give it to Mrs. Garber. I was paid by Mrs. Garber when she came up here afterwards, a month or three or four weeks, I don't remember when it was. It might have been a month and it might have been six weeks. I think the despatch I received was a night despatch. I received it Sunday. I received it early in the morning. I went right down town a few minutes after getting it to find Mr. Brawner. I went to the post-office. You can see almost anybody there at eleven or twelve o'clock Sunday. I did not go down at once with the despatch. I remember testifying in this case on former trial. I have got an idea now it was at

the dinner-table I got the despatch. My memory is very bad, indeed, since I have been sick; I can't remember hardly anything.

Testimony of N. B. Weed.

And further to maintain the issue on her part, the plaintiff called as a witness N. B. Weed, who, being duly sworn, testified as follows:

I was connected with the defendant company from fall of 1869 until about a year since, about three years in all. I was at first book-keeper for Mr. Brawner up to October, 1870, and after that I was cashier for the company. I was appointed by the company direct. As cashier I attended to collection of renewals and forwarding same to the company. The practice of the company while I was agent, in reference to receiving premiums from parties after they due under the terms of the policy, was that we tried to collect them all when they were due as much as possible. It was customary at that time to allow them thirty
28 days. If it was delayed beyond that time the company's rule was to require a new medical certificate, unless they could satisfy them that they were in good health. This practice was known to the company at the home office. After thirty days it required a medical certificate. If a party came to the office within the thirty days after the premium was due, by terms of the policy, we made no requirements in regard to his health. If the premium was sent by letter within the thirty days there was no requirement. The company would not know the time a premium was received in the office in St. Louis. It was customary to remit premiums semi-monthly, on the 15th and 30th of the month. If a premium was remitted on the 30th the company would suppose it paid after the 15th; if it went into the report of the 15th December the company would suppose it was paid between the 1st and 15th of December, including both days. The premium due on this policy due November 1st, 1871, was paid in December, about the 14th. I don't remember any requirement as to condition of Mr. Garber's health at that time. The premium December 14, 1871, was paid by Mr. Gross, a partner of Mr. Garber's. I think I made inquiry of Mr. Gross regarding Mr. Garber's health; I think I required a certificate of examination, but am not positive. I did not require any certificate from or examination of Mr. Garber. I received a note for the premium December 14, 1871, & I sent it for collection to 187 Camp street, New Orleans, to the firm of Garber & Reynolds, I think. I left it with the Central Savings Bank here for collection. The bank returned it not collected & I left it with J. P. Colby for collection. I did not know Mr. Garber had a residence anywhere at that time. I supposed he was in St. Louis a part of the time & in New Orleans a part of the time. I did not
29 know anything about his residence. I knew his place of business was New Orleans; I had been told so by Mr. Francis. My recollection is not specific whether I made any statement to Mr. Colby in respect to the residence of Mr. Garber. I left his address at New Orleans. I wrote a letter to Mr. Garber at New Orleans and received no answer. I then wrote a letter to Mr. Gross, April 6th, 1872. I did not ask Mr. Gross about Mr. Garber's residence; it was simply where he might be found. Of course I supposed he resided at the point where he was doing business at that time. This is a notice shown me, dated November 1st, 1872. This is a notice for a renewal receipt, due November 1, 1872, received some time in October & mailed to New Orleans, received from the home office & mailed to Mr. Garber to New Orleans some time before the 1st. I could not state what date; it might have

been mailed on the first; probably before the first. I sent it before the first because the note was collected there.

Thereupon the following question was asked the witness by plaintiffs' attorney: State what you knew at the time of sending that notice in regard to Mr. Garber's residence?

To which question defendant, by counsel, objected on the ground of irrelevancy & incompetency of the testimony and question.

And the court overruled the objection & allowed the question to be answered; and defendant, by its counsel, then & there to the action of the court in this behalf excepted.

And witness testified in reply: I knew nothing except the information I had received from the parties up here, Mr. Gross, and Francis & Co.

And thereupon the plaintiff, by attorney, further inquired of
30 the witness: Now, I will ask you whether that notice we have reference to, dated November 1st, 1872, whether you directed that notice in accordance with the information you received in reference to his residence?

To which question the defendant, by attorney, objected because of incompetency & irrelevancy of the question and testimony to be adduced thereby. And the court overruled said objection, and to the action of the court in this behalf the defendant, by counsel, then and there excepted.

And the witness replied: Yes, sir.

And thereupon this witness testified this notice was directed to 187 Camp street, New Orleans. I don't know how I directed the first notice. When I sent this notice, dated November 1st, 1872, I didn't know Mr. Garber had any residence in one place in New Orleans any more than he had in St. Louis or some point east. I knew he was a travelling man or had been. I did not know he was a married man. I did not see the policy; never read the application; it was taken before I came into the office. I was interested in the collection of renewal receipts only.

In response to a question by the court the witness testified: This notice in respect to the premium of November 1, 1872, sent to New Orleans to Mr. Garber must have been mailed within a day or two of the 1st of November, 1872. I think I recollect the renewal receipts were late in arriving at this office in October, and that it was sent not far from November 1st, within a day or two. As to the premium received November 11, 1872, I know I was at the office & the collector soon came
in with the money which he said he had received at Mr. Wolfe's
31 office. I took it and put with the rest of the company's money. It was returned to the company about the 15th of the month. It was received on the 11th about 9 a. m. A list of policy-holders with residences was made out and forwarded to the company a year prior to that. I could not say where Mr. Garber's residence was then. I informed the company of Mr. Garber's death soon after I heard of it.

Question by plaintiffs' attorney: And also the fact of his having resided in New Orleans?

Objected to by defendants, by attorney, because assuming a fact not proven, but denied by plaintiffs' own witness, & because of incompetency & irrelevancy. Objection overruled by the court, and to the action of the court in this behalf the defendant then and there excepted.

Witness replies: I cannot tell. I suppose the letter is on file or the copies of that are in the office.

Witness proceeds & testifies: This paper is a letter written by me to

William H. Gross. This paper was given for premium just before I came there. This paper is a note that was given. This is a note in handwriting of Wm. A. Brawner, manager of the defendant at St. Louis, dated November 1, 1870. This is a receipt for premium of Nov'r 1, 1872, the last one. This is for the year prior, 1871. This is a receipt signed Wm. A. Brawner. This is my writing dated Nov'r 3, 1871. I sent this to N. Orleans, because I was told he was there. I don't know what was told me, but I knew he was doing business there at that time; that was all I knew about it; a permanent business; there had been two or three premiums collected from New Orleans. I directed the notice
32 of November 1st, 1872, to New Orleans, because I supposed Garber was there. I had directed a letter to him at New Orleans the year previous. I knew during the pendency of this policy that Mr. Garber was an importer of marble; that he had business relations in New Orleans, and also that he had had with Mr. Gross & Dan'l Francis & Co.; how much of the time he spent in New Orleans or St. Louis, I didn't know. I suppose his time was divided between those two points and some points east, just as business called.

On cross-examination, Mr. Weed, witness, testified as follows: When a note was given by Mr. Garber, like that of December 14, 1871, for instance, on the books of the company, Mr. Garber was credited at once with the premium, and I or the manager, Mr. Brawner, took the individual risk of the collection of the note. I was charged, as of November 1st, with the amount of the renewal receipt. The return to the company would show the premium was paid between December 1st and December 15th, but not the exact date. On receipt of my return for December 15th, 1871, the company had every reason to suppose the premium for 1871 was paid subsequent to December 1st, 1871. The company never knew when the note was collected, whether it was collected the next month or the next year. The notice for the premiums due November 1st, 1872, when it came to me from the home office, was addressed to Charles H. Garber, St. Louis, Mo., & the erasure of St. Louis was made by me and New Orleans inserted. These notices were addressed at the home office according to the residence shown in the application. After the receipt of the premium on November
33 11th, 1872, as stated, I made a return to the home office within a day or two of the 15th November. This return showed receipt of the Garber premium between 1st & 15th Nov'r, inclusive. After the company learned of the receipt of this premium they requested us to tender it back; this instruction to tender back we received about a week after Mr. Garber's death. In pursuance of these instructions I tendered back the premium in money to Mr. Warne, in our office; he would not produce the receipt & did not get the money. It may have been ten days after Garber's death; it was two or three days after I mailed my return. Mr. Brawner, the manager at St. Louis, had written the home office, and a telegram was received in reply, to tender back the premium, & I acted on that. If a person paid his premium thirty days or more after it was due, we might require a medical certificate, unless we were perfectly satisfied he was in good health. If he paid within the thirty days we hardly ever inquired after his health at all. If he appeared in person no inquiry was made, because we saw the man. If he came within the thirty days evidently in poor health we refused the premium after it was due. If he was sick he could not pay. If he paid through another person within the thirty days we usually accepted the premium; after that it was customary to inquire after the insured's health. It was our privilege to inquire after health. We fre-

quently did so if there was any doubt about it. If we were well acquainted with the parties we seldom paid any attention to it. John Devine was office-boy and made collections under me. I collected at the office. In my absence he might collect. The renewal receipts were under my control. Devine had no instructions regarding taking
34 renewal receipts from the vault. I usually gave him the renewal receipts with instructions, but not always. When the premium for November 1, 1872, came into my hands, November 11, 1872, I had no information that Mr. Garber was ill.

And thereupon defendant, by its counsel, put the following inquiry to witness: If you had (such information) would you have received the money?

To which question the plaintiff, by her counsel, objected on the grounds of incompetency and irrelevancy, and the objection was sustained by the court, and the witness was ordered not to answer the question. And to the action of the court in this behalf the defendant, by its counsel, then and there excepted.

On re-examination the witness testified as follows, to wit: Before I sent the premium received November 11, 1872, a letter was sent the company, & a telegram received requiring us to tender it back; the letter announced the death & the circumstances of payment. I made the tender in greenbacks to Mr. Warne. He said he did not have the renewal receipt. The return of the renewal receipt was a condition of the tender. Devine had the combination of the vault-lock.

Testimony of John H. Tracy.

And further to maintain the issue on her part to be maintained, the plaintiff called as a witness John H. Tracy, who, being duly sworn, testified as follows:

I am cashier of the Central Savings Bank. A note of Mr. Garber's was left with us for collection in 1870, November 10th, 1870, by Mr. Brawner, which I understood was for premium of Garber. The
35 note was collected. This is dated Nov. 1, 1870. Mr. Brawner said the note was for premium of Mr. Garber, who lived in New Orleans; that he had a great deal of trouble in collecting of Mr. Garber; that he sometimes collected through Francis & Co., in St. Louis.

A receipt is offered to show Mr. Brawner was manager of the company at St. Louis, and the defendant's counsel admitted that he was, and also admitted Mr. Weed was cashier at St. Louis of the defendant.

Hereupon, further to maintain the issue on her part to be maintained, plaintiff offered and introduced in evidence receipts for premium, dated November 1, 1870, Novr. 1, 1871, Novr. 1, 1872, which said receipt, dated 1st November, 1870, is in the words and figures following, to wit:

Receipt for prem. Nov. 1st, 1870.

[Non-payment of premiums when due annuls the policy, (except as provided in the policy,) but it may be renewed at the home office within a reasonable time upon satisfactory evidence of good health being furnished.] 104.2.

THE GLOBE MUTUAL LIFE-INSURANCE COMPANY,
New York, Nov. 1, 1870.

Received the sum of one hundred & thirty-four $\frac{35}{100}$ dollars for payment in full of annual premium on policy No. 17557, on life of Chas. H. Garber, which continues said policy in force to Nov. 1, 1871. Not

binding until the amount named herein is actually paid and this certificate countersigned by—

$134.35. WILLIAM A. BRAWNER,
Manager.
HENRY C. FREEMAN,
Secretary.

Countersigned:
WM. A. BRAWNER,
Gen'l Agent.

And the receipt dated 1st November, 1871, is in the words and figures following, to wit:

Receipt for prem. 1st Nov., 1871.

[Non-payment of premiums when due annuls the policy, (except as provided in
36 the policy,) but it may be renewed at the home office within a reasonable time upon satisfactory evidence of good health being furnished.]

THE GLOBE MUTUAL LIFE-INSURANCE COMPANY. 124.787.
New York, Nov. 1, 1871.

Received the sum of one hundred & thirty-four & $\frac{35}{100}$ dollars for payment in full of annual premium on policy No. 17557, on life of C. H. Garber, which continues said policy in force to Nov. 1, 1872. Not binding until the amount named herein is actually paid and this certificate countersigned by W. A. Brawner, manager, and N. B. Weed, cashier.

$134.35. PLINY FREEMAN,
President.

Countersigned:
WM. A. BRAWNER,
Manager.
N. B. WEED,
Cashier, Agent.

And the receipt dated 1st November, 1872, is in the words and figures following, to wit:

Receipt for prem. 1st Nov., 1872.

[Non-payment of premiums when due annuls the policy, (except as provided in the policy,) but it may be renewed at the home office within a reasonable time upon satisfactory evidence of good health being furnished,]

THE GLOBE MUTUAL LIFE-INSURANCE COMPANY. 144,960.
New York, Nov. 1, 1872.

Received the sum of one hundred & thirty-four $\frac{35}{100}$ dollars for payment in full of annual premium on policy No. 17557 B on life of C. H. Garber, which continues said policy in force to Nov. 1, 1873. Not binding until the amount named herein is actually paid and this certificate countersigned by Wm. A. Brawner, manager, and N. B. Weed, cashier.

$134.35. JAS. M. FREEMAN,
Secretary.

Countersigned:
WM. A. BRAWNER, *Mgr.*
N. B. WEED, *Cash'r, Agent.*

Also offered a letter dated April 6, 1872, by said N. B. Weed to Wm. H. Gross, to which testimony and evidence defendant, by its counsel,

objected on the ground of incompetency & irrelevancy. And the court overruled said objections & allowed said letter to be
37 read, and to the action of the court in this behalf the defendant then and there excepted. The letter was thereupon read to the jury, as follows:

Letter of N. B. Weed to W. H. Gross.

[Southwestern department Globe Mutual Life-Insurance Co., N. Y., Wm. A. Brawner, manager.]

ST. LOUIS, *Apl. 6th*, 1872.

W. H. GROSS, Esq.:

DR. SIR: Did you give me Mr. Garber's right address in N. O. in yours of 6th ult.? I sent the note to 187 Camp street, as you directed, & it has been returned not collected. Please inform me on receipt of this where I am to look for payment of this. I understand Mr. Garber is reliable & honorable, & I think there must be some mistake somewhere.

Yours, truly,

N. B. WEED.

Plaintiff further offered & introduced in evidence the notice for premium of November 1st, 1872, to Charles H. Garber, New Orleans, as follows, to wit:

Notice for prem. 1st Nov., 1872.

[Globe Mutual Life-Insurance Co. of New York, southwestern department, 317 Olive st., St. Louis, Mo., Pliny Freeman, president; Loring Andrews, vice-president; James M. Freeman, secretary.]

Mr. C. H. GARBER, N. O.:

DEAR SIR: The premium on your policy will be due on the 1 day of Nov., 1872, No. 17557 B. A., premium, $134.35. On payment of the above premium you will be entitled to a year's dividend of $24.20, which you can apply as cash in settlement of the premium, or apply to purchase an addition to the amount of your policy, of $66.45, as you prefer. If you apply the dividend to purchase additional insurance it can be reconverted into cash at any time in payment of future premiums to the company. The additional insurance will not be for-
38 feited by the discontinuance of the policy. It will participate in the profits of the company, and if the dividend of each year is so applied, the amount of your insurance will in a few years be largely increased. The officers recommend this application of the dividend as most to the interest of the assured.

Very respectfully, yours,

WM. A. BRAWNER, *Manager.*
N. B. WEED, *Cashier.*

Please present this when you pay the premium. In case of change of residence please inform the company or the agent.

NOTICE.—Non-payment of premiums when due annuls the policy, (except as provided in the policy,) but it may be renewed within a reasonable time upon satisfactory evidence of good health being furnished.

Also offered a letter from N. B. Weed to Charles H. Garber, St. Louis, dated November 3, 1871, to the introduction of which the defendant ob-

jected on the ground of irrelevancy and incompetency, and the court overruled said objections and allowed the letter to be read, and to the action of the court in this behalf the defendant, by its counsel, then and there excepted, which said letter is in the words and figures following, to wit:

Letter from N. B. Weed to Chas. H. Garber.

[Pliny Freeman, prest.; Loring Andrews, John A. Hardenbergh, vice-prests.; Henry C. Freeman, sec'y; Wm. A. Brawner, manager.]

SOUTHWESTERN DEPARTMENT GLOBE MUTUAL
LIFE-INSURANCE CO., N. Y.,
317 *Olive Street, St. Louis, Novr. 3d*, 1871.

CHARLES H. GARBER, Esq.,
New Orleans:

DEAR SIR: A notice of the annual prem. on your life policy No. 17557 was mailed you in care of "Dan'l Francis & Co.," but they have referred me to you for payment. If you desire the dividend applied in cash please sign and return the enclosed receipt and remit the bal., $119 $\frac{45}{100}$, 39 and your renewal receipt will be mailed you immediately. Please reply at once, as receipts can he held only 30 days, & then at the risk of the assured.

Yours, truly,

N. B. WEED, *Cash'r.*

P. S. If you request Danl. Francis & Co. to pay prem. we will collect of them as heretofore.

Also offered and introduced note by Garber dated December 14, 1871, $136.75, as follows, to wit:

Pro. note by Garber, 14 *Dec.*, 1871.

[10-cent rev. stp.]
$365 $\frac{75}{100}$.]

ST. LOUIS, *Dec.* 14, 1871.

Sixty days after date I promise to pay to the order of N. B. Weed one hundred thirty-six $\frac{75}{100}$ dollars for life ins. prem. at Mercantile Bank of St. Louis, for value received, negotiable and payable without defalcation or discount, and with interest from at the rate of per cent. per annum.

No. . Due Feb. 12–15, '72.

CHAS. H. GARBER.

(Indorsed:) [N. B. WEED. Erased.]

Testimony of Wm. H. Gross.

And thereupon, further to maintain the issue on her part, the plaintiff, by her attorney, offered and introduced in evidence the deposition of William H. Gross, who therein and thereby testified as follows:

I know Charles H. Garber. I informed an agent of the defendant at St. Louis that he (Garber) resided in New Orleans. It was when I gave Weed, the agent, a note for the premium; that note was paid. Garber resided in New Orleans from the spring of 1871 to 11th day of November, 1872.

On cross-examination witness testified: I saw Weed at his office.

Mr. Billings was not with me. I signed Garber's name to the note by authority. Garber went to New Orleans in spring of 1871; he was an importer of marble. Garber lived in New Orleans for the last 15
40 years of his life, more or less; during the last two years of his life he was in New Orleans about two-thirds of the time. During the months of July, August, September, October, & November of 1871, he was part of the time at Lee, Massachusetts; part at Bridgeport, Conn.; part at Philadelphia, and part at St. Louis. In same months, 1872, he was part of the time at New Orleans, and part at St. Louis. Garber was my cousin. I am 29 years old.

Testimony of Jno. P. Colby.

And thereupon plaintiff, further to maintain the issue on her part, introduced as a witness John P. Colby, who, being duly sworn, testified as follows:

I am attorney at law. I received a note for collection against Mr. Garber, cashier of the defendant. This is the note. The information left at my office was that Mr. Garber lived at New Orleans. While I was collecting the note dated Dec. 14, 1871, Mr. Weed came to the office more than once, and talked of the debtor as living at New Orleans. Whether he told me at the time he lived there, whether the debtor resided there, I cannot testify. Mr. Weed was at my office at different times while the note was in process of collection, and the debtor was always spoken of as residing at New Orleans. The note was collected by us at New Orleans, July 13th, 1872.

On cross-examination this witness further testified: The most I mean by the term designating his place is to indicate where we were led to look for him for the purpose of this collection. I have no knowledge whether he was there temporarily or permanently. He could be found there is all I mean. Might be found there for collecting that note. I cannot say I received any knowledge from Mr. Weed as to the permanence of Mr. Garber's stay in New Orleans.

41 On re'xamination this witness testified: Mr. Garber's name was to the note. Where Mr. Garber was was spoken of to know where to send the note. Ordinarily I would send where the man was. If he was a dishonest man I would send where he had his money.

Testimony of Eliza Garber.

And, further to maintain the issue on her part, the plaintiff, Eliza Garber, being duly sworn, testified as follows:

I am the plaintiff. I received the notice dated November 1, 1872, in New Orleans, on November 4th, 1872. It is addressed Charles H. Garber, 565 Carondelet st., New Orleans. On the envelope there was a stamp of the Globe Insurance Company. I opened it & found the notice saying his premium would be due November 1, 1872. It was this notice now here shown me. The number on Carondelet st. was our private residence; housekeeping at that time. His place of business was Chapoutoula street, bet. Washington & 6th streets—always. We resided once on Camp street. The premium paid on November 11th, 1872, was never tendered back to me. I was married September 15th, 1869. I had not seen Mr. Brawner, manager of defendant. Mr. Garber gave me the policy November 1st, the day he had his life insured, as a bridal present. He gave it me November 1st—not the receipt, but the policy. We were married in the fall, and after our marriage we went east;

travelled different parts of the East and returned to St. Louis in October, and then moved to New Orleans; left St. Louis November 1st. We spent the winter there. We spent the summer, from July 1st to November 1st, in 1872, at New Orleans.

On cross-examination plaintiff further testified: Previous to taking out the policy I was residing in St. Louis. I really cannot say Mr. Garber was residing here, (St. Louis.) I know nothing about his
42 application to the company to get insured. I don't know where he lived. He was a gentleman who travelled a good deal. Before our marriage he was travelling, part of the time in St. Louis, and part of the time in the East. We did not go to New Orleans for five or six weeks after we were married. In the summer of 1870 we were part of the summer in the East and part of the summer in St. Louis. We went to New Orleans that year early in the fall. In 1871 we resided in N. Orleans. In that summer Mr. Garber came to St. Louis for 10 days, and returned to N. O., in 1872. We were housekeeping at 565 Carondelet street, N. O. Mr. Garber was in St. Louis 10 days in September, 1872. I sent a despatch to Mr. Warne on November 10th, 1872, in the morning, between 8 and 9 o'clock. It was Sunday. My husband was not then dangerously ill. I had never heard that he was dangerously ill. He was ill at that time, but not dangerously. He was ill with the yellow fever. He died the next day about noon, about half past eleven o'clock.

And this was all the testimony and evidence offered or introduced by plaintiff; and thereupon the plaintiff rested her case.

And thereupon the defendant, by its counsel, moved the court to give to the jury the following instruction: "The jury are instructed by the court that, on the testimony and evidence introduced by the plaintiff herein, she is not entitled in law to recover in this action; and the jury will find for the defendant."

And the court overruled the motion and refused the instruction; and to the action of the court in this behalf the defendant, by its counsel, then and there excepted.

And thereupon, to maintain the issue on its part to be main-
43 tained, the defendant was about to call its witnesses to prove the facts next hereinafter stated, when the same were, in open court, by the plaintiff, expressly admitted to be true.

Agreed facts.

1. When John Devine received the amount of the renewal premium, on November 11th, from Warne, no statement was made to him as to the condition of Mr. Garber, nor were any questions asked by the company's agents concerning his health.

2. Nothing in regard to the illness was communicated to any of the officers of the company. Nothing in regard to the illness was communicated to Warne by Mrs. Garber's telegraphic despatch.

Testimony of Wm. A. Brawner.

And thereupon the defendant introduced, as a witness to maintain the issue on its part, William A. Brawner, who, being duly sworn, testified as follows:

In 1869 I was manager of the defendant at St. Louis. I remember Mr. Garber's application for insurance. He gave me his residence as at

St. Louis. He was then at St. Louis. I never knew of any change of residence on his part. He was travelling from place to place. He was here sometimes and east once or twice. I never learned, directly or indirectly, that he was residing at N. Orleans as a permanent residence. I knew he was there. I was not informed, directly or indirectly, that he ever did permanently at New Orleans during the summer months, nor from July 1 to November 1. When I made the application he told me he had business in N. Orleans sometimes, and sometimes in St. Louis. He gave his residence St. Louis.

44 On cross-examination this witness testified further, as follows: I did not ask any questions about his marriage—whether recent or not. I don't remember that I was told he was recently married; that was not the reason he wanted me to obtain a policy on his life. I had known him, probably, three minutes. Another agent, in another company, introduced me. I insured him in a very few minutes. I took him to the doctor's office and wrote his application there, and had it examined there; never saw him afterwards more than a few minute. I judged he was married when he made his application, and ever since. He told me he was doing business at New Orleans and here with Francis & Co.; that he was travelling. He gave me his residence in St. Louis. I would not put it so unless he gave it me. He was, he said, an importer of marble; business in different places. He had business in New Orleans. He told me to put residence St. Louis. I wrote the application and he signed it just as it is there. I had nothing to do with the collection of these notes. Mr. Weed had charge of them. I met Garber subsequently—probably two or three times. I, of course, spoke to him. He came, I think, to the office once or twice. I can't say whether I accosted him as a stranger or daily acquaintance. Had he resided here during the policy I would have, I suppose, known it. I would not meet him as a stranger. He was a policy-holder. I never met his wife until after Mr. Garber's death. These notes were sent for collection to New Orleans. I think they were sent one time from information Mr. Weed got. They were paid here once or twice. Those sent to N. Orleans were sent there to collect them. I do not know where he

45 lived. I had information that he had a place of business in New Orleans. I know nothing of the notes being collected anywhere else than in St. Louis or New Orleans. I had a conversation with Mr. Tracy that these notes were to be sent to New Orleans for collection. Mr. Garber's headquarters, during the pendency of this policy, were at the place of Daniel Francis & Co., St. Louis. I can't tell whether he could be found there all the time. I mean by headquarters his place of business—a place where he would pay his premiums. I think I received a letter from Mr. Garber to send to New Orleans for the premium when I spoke to Mr. Tracy. I knew the letter was received.

Application for insurance.

And thereupon the defendant offered and introduced in evidence the application in writing made by Mr. Garber for insurance with statement of physician, intimate friend, &c.

Which said application is as follows, to wit:

45½ *Application to the Globe Mutual Life-Insurance Co.*

Office corner of Fulton and Broadway, New York.

No. of pol., 17,557. Kind pol., life. In whose favor, wife. How

payable, ann. Age, 35. Amount, $5,000. Premium, $0.$\frac{134}{35}$. Date, Nov. 1, '69.

Particulars, forming the basis of the contract, required from persons proposing to effect assurance on lives in this company.

1. Name (in full) of the party whose life is proposed to be insured.—Charles H. Garber.
2. Present residence?—Town of St. Louis, in the county of St. Louis, in the State of Mo.
3. Profession or occupation.—Importer of Italian marble.
4. Age nearest birthday.—35. Weight?—Abt., 165. Height?—5, 5.
5. Place and date of birth. (Town, State, and county.)—Pennsylvania. Year, 1834. Month, Nov. Day, 15.
6. Places and terms of residence since birth.
7. Is said party married or single?—Married.
8. Are the habits of said party at the present time, and have they always been, sober and temperate?—Yes.
9. Has the party had yellow fever; if so, when, where, and who was the medical attendant?—No.
10. Has the party had the small-pox?—No. Or been vaccinated?—Yes.
11. Is the party subject or predisposed to pulmonary disease, rheumatism, scrofula, or any other disease or bodily infirmity?—No.
12. Has the party been afflicted since childhood with any of the following complaints?

(Answer opposite each query.)

Diseases of the lungs or air-passages?	No.
Spitting of blood?	
Bronchitis? Asthma?	
Insanity?	
Rheumatism; or gout?	
Rupture?	
Fits or convulsions?	

(Answer opposite each query.)

Fistula?	No.
Paralysis?	
Spinal disease?	
Apoplexy?	
Epilepsy?	
Chronic diarrhea?	
Dyspepsia or indigestion?	
Delirium tremens?	

(Answer opposite each query.)

Palpitation or disease of the heart?	No.
Disease of the skin, liver, kidneys, or brain; or of the urinary organs or bladder?	
Any serious disease whatever?	

13. Has the party ever met with any accidental or serious personal injury?—Had leg broken in 1867; all right now.

14. Has the party ever been seriously ill; if so, when; with what complaint, and who was the medical attendant? (State his name and residence.) State the year, duration of illness, and date of recovery.—No.

15. Is the said party now in good health?—Yes.

16. Has any near relative of said party died of or been afflicted with consumption, scrofula, insanity, gout, or any pulmonary complaint or hereditary disease? (State particulars.)—No.

17. Is the party's father living?—Yes.
If living, what is his age?—65.
If deceased, at what age did he die?
What was the cause of his death?

18. Is the party's mother living?—Yes.
If living, what is her age?—62.
If deceased, at what age did she die?
What was the cause of her death?

19. How many of the party's grand-parents are living? and what are their ages? Ages
Answer. No. living living. Answer. 1. 2. 3. 4. None.

How many of the party's grand-parents are deceased? And at what ages did they die? Ages
Answer. No. deceased deceased. Answer. 1. 2. 3. 4.

What was the cause of death? 1. 2. Old age. 3. 4.

20. Has the party any brothers living?—Yes.
If so, how many?—2.
What are their ages?—25 & 40.

21. Has the party any sisters living?—Yes.
If so, how many?—3.
What are their ages?—27, 30, 32.

22. Has the party any brothers deceased?—Yes.
If so, how many? At what ages and of what diseases did they die?
(Cause of death.)

Answer. No. deceased, 3. Ages, 2. 1. 1. Infancy. 2. Killed by Indians. 3.

23. Has the party any sisters deceased?—Yes.
If so, how many? At what ages and of what diseases did they die?
(Cause of death.)

Answer. No. deceased, 2. Ages, 35. 1. 1. Child-birth. 2. Infancy. 3.

24. What is the present and general state of health of each of parents and brothers and sisters now living?—Good.

25. Is the party now insured in this company, or has he ever been; and, if so, state No. of policies and amount.—No.

26. Has the party any other insurance of his life; if so, in what company, and for what amounts?—Yes. $5,000. Economical Life.

27. Has any proposal to insure the life of said party ever been declined; if so, by what company, and for what cause?—No.

28. Has any proposal to insure the life of said party ever been made to any company or agent upon which a policy has not been issued? If so, state what company or agent.—No.

29. Where has the party resided (during summer and winter) the last ten years? If at the South, state when, where, and how long, and what was the effect on the health.—St. Louis, Mo.

30. Has the party been in the Army; if so, how long, and what effect on the health?—No.

31. Name and residence of the party's usual medical attendant; or, if having none, of some other medical person, to be referred to for information as to health.—Have none. Has known said party years.

32. Name and residence of an intimate friend, not interested in the proposed insurance, to be referred to for similar information as to health.—Danl. Francis, St. Louis. Has known said party 5 years.

33. Sum to be insured, $5,000, annually. Kind of policy desired, common life. Amount of first premium, $134.35. Registered? No. Date of commencement of risk, Novr. 1st, 1869.

34. Name residence, and occupation of the party in whose favor the insurance is proposed, and relationship, if any, to the party whose life is proposed to be insured.—Mrs. Eliza Garber, wife of applicant.

35. If an endowment policy is desired, to whom is it to be paid in case of the party living to the specified age?

It is hereby declared, that the above are fair and true answers to the foregoing questions, and it is acknowledged and agreed by the undersigned that the above statements shall form the basis of the contract for assurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the person's health, or neglect to pay the premium on or before the day it becomes due, will render the policy null and void, and forfeit all payments made thereon, except as provided in the policy; and it is also understood and agreed that under no circumstances shall the policy be in force until the actual payment to and acceptance of the premium by the company or its authorized agent, and that no agent of the company has power or authority to deliver any policy in pursuance of this application until such actual payment.

Dated at St. Louis, this 1st day of November, 1869.

(Signed) CHAS. HEEBNER GARBER,
For Eliza Garber.
CHAS. H. GARBER.

Witness: WM. A. BRAWNER.

Recommended by—

WM. A. BRAWNER,
Genl. Agent.

Medical examiner's report.

Name and residence of the person examined.—Chs. H. Garber, St. Louis, Mo.

1. Height?—5 ft. 5 in. Figure?—Stout. Complexion?—Dark. Weight?—165. Number of inches around the chest under the vest?—36. Full inspiration?—39. Full expiration?—35. General appearance?—Healthy.

2. Do you believe the party to be sober and temperate in his habits of life?—Yes; says he is.

3. Is he given to the use of tobacco; if so, to what extent?

4. Whether any sign of affection of the head, or of predisposition to it?—None.

Whether paralysis, tremors, catchings of any part, or any other nervous affection?—None.

5. Does auscultation and percussion of the chest indicate any disease of the heart or respiratory organs?—None.

6. A. Is the respiratory murmer clear and distinct over both lungs?—Yes. B. Is the character of the respiration full, easy, and regular?—Yes. C. Are there any indications of disease of the organs of respiration?—None.

7. A. Is the character of the heart's action uniform, free, and steady?—Yes. B. Are its sounds and rhythm regular and normal?—Yes. C. Any aneurism, or indications of disease of this organ, or of the blood-vessels?—No.

8. A. State the rate and other qualities of the party's pulse.—78; good vol.; force regular. B. Does it intermit?—No. C. Is it irregular or unsteady?—No.

9. Whether habitual cough or expectoration; occasional difficulty of breathing or palpitation? Has he ever spit blood; any pains or soreness about the chest?—No.

10. Whether any dropsy or œdema now or previously, or any signs of disease of the abdominal or other viscera? Any syphilitic or other disease not included in the previous questions?—None.

11. If any rupture, state whether reducible or not, and if a truss is worn.—Never had.

12. Has the party any eruption, or disease of the skin, any swellings, indurations, tumors, varicose veins, or ulcers? If so, where are they located and what are their characters?—None.

13. Whether previous disease or mechanical injury?—Except leg broken, but all well.

14. Is the party considered acclimated?—Yes.

15. Have you read the application to the party and certificate of his medical referee?—Yes.

And do you believe the questions in the application are understood by him and correctly answered?—Yes.

NOTE.—The medical examiner is particularly requested to read the application to the party, or question him as to the answers, so as to satisfy himself the questions are understood by the applicant and correctly answered.

19. Opinion on the life?—Very good.

A decided opinion, recommending the acceptance or rejection of the proposal.—Very good & risk advised.

Dated at St. Louis on the 1st day of Novr., 1869.

(Signed) R. M. JORDAN,
Medical Examiner.

18 .

I hereby certify I am the person who has been examined as above.
(Signature of person examined) CHAS. H. GARBER.

Witness: R. M. JORDAN, *Med. Ex.*
Remarks: Appd. Novr. 5th, 1869.
No. 17557.

C. H. GARBER.

Certificate of physician of the person to be assured.

1. A. How long have you known . B. Have you been in the habit of seeing him frequently, and giving him medical attendance; and for what diseases? C. Have you attended him recently?
2. Is he now in good health?
3. A. Is he sober and temperate? B. Has he always been so?
4. A. Has the person's family, or has this applicant, been afflicted with pulmonary complaints, scrofula, insanity, or any constitutional or hereditary disease? B. Has the applicant's family, or has he, any such predisposition?
5. Has he at any time been afflicted with insanity, gout, rheumatism, dropsy, palsy, apoplexy, disease of the heart, aneurism, rupture, fistula, asthma, spitting of blood, affection of the lungs, or other viscera, spinal affection, or with any organic disease?
6. Have you any knowledge of the rate and other qualities of the pulse? If so, what are they?
7. A. Are the functions of the brain nervous and muscular systems, the lungs, heart, the abdominal and urinary organs in a healthy condition? B. Has the person ever had any disease of these organs? C. Has he had any serious injury or illness? If so, what effect had it had on applicant's condition?
8. Is his constitution healthy, and are his habits and circumstances such as to render him safely assurable?

Questions to be answered by the friend of the party applying for insurance.

1. Name and residence of the party whose life is to be insured.—Chas. H. Garber, St. Louis.
2. How long have you known him?—5 yrs.
3. A. Are his habits of life temperate?—Yes. B. Has he always been temperate?—Yes.
4. Are his habits active or sedentary?—Active.
5. Do you know, or have you heard, that he has ever been afflicted with rheumatism, gout, asthma, consumption, spitting of blood, rupture, fits, or any other disorder tending to shorten life?—No.
6. Has he been afflicted with any serious disease?—No.
7. Has he been afflicted with any mental derangement?—No.
8. Do you esteem him a healthy man and free from any circumstances tending to shorten life?—I do.
9. Do you believe him to be now in good health?—I do.
10. Do you know of any reason, not alluded to in the above questions, why he is not safely insurable?—No.

(Signed) DANIEL FRANCIS.

Dated Nov. 1st, 1869.

46 And further to maintain the issue on its part, defendant, by its counsel, offered and introduced the deposition of Dr. D. W. Brickell, who testified as follows:

I am a practicing physician in New Orleans since 1848; have large practice. I was called in consultation by Dr. Perry in Charles H. Garber's case—a case of yellow fever. It was at ½ past nine or eleven o'clock on the morning of Sunday, November 10th, 1872. I told Dr. Perry at once, after seeing Mr. Garber, that I considered his condition absolutely desperate—one which might be termed a hopeless

case. I recommended certain remedies. I came out of such a condition myself once. I saw Garber again in the evening. He was getting worse—going downward. I had no conversation with Mrs. Garber save giving instructions, encouraging her, &c. I expressed my opinion to Dr. Perry only.

Cross-examination waived.

And thereupon the defendant rested the defence.

Re-examination of Eliza Garber.

And thereupon the plaintiff, by her counsel, offered herself again to be examined, and the following question was asked her by her counsel: In reference to this statement in this proof of loss or death that was made wherein you stated, or it was stated, that Mr. Garber had been ailing over a month—I believe is the statement—what have you to say in regard to that?

And to this re examination and question the defendant, by its counsel, objected, because it was testimony in chief; was not responsive to or in rebuttal of any testimony for the defence; was to affect only a paper already offered and introduced by the plaintiff herself
47 as sworn to, and she was estopped to deny or qualify it at this stage of the case, and was otherwise incompetent and irrelevant.

Thereupon the court overruled the objection; and to this ruling and action of the court in this behalf the defendant, by its counsel, then and there excepted.

And the plaintiff thereupon testified as follows:

The truth was, I was really astonished at the last trial when that proof stated Mr. Garber had been complaining a month, for it was impossible for me to hear him complain a month. He was perfectly well until the 6th day of November. It was the first day I heard him complain. I was at St. Louis attending the State fair in 1872, which year the fair continued over a week; so I was not at home even if he had complained, which he didn't. That proof was written out by a notary sent by the agent of the Globe in New Orleans, just a few days after Mr Garber's death, and I really was in such a nervous state at that time I knew scarcely what I said. That signature there I believe is mine, but not the filling up of that proof of loss. I don't know whether Mr. Garber complained until the 6th day of November; even then he was attending to his business on that day. I don't remember making any such statement to the notary; instead of being one month, it ought to be one week, for I was absent at the fair, and was not home until a very short time previous to Mr. Garber's death.

On cross-examination plaintiff further testified:

I came up in October and attended the fair. I can't say when I got home. I was not home more, perhaps, than two weeks before Mr. Garber's death. My husband was up here in September. I in October.
48 I came alone. My attention was called to this before, but since that I have remembered attending the fair. This proof of loss was drawn up by a notary sent by an agent of the Globe. It is signed by me. I swore to it.

And this was all the testimony and evidence on either side. It is admitted practice that no further pleading is allowed after reply.

And hereupon the case was closed upon the evidence and testimony, and the court adjourned until Monday, October 5th, 1874, at 10 o'clock a. m. And upon October 5th, 1874, the court having met pursuant to adjournment, and the jury being present, the defendant, by its counsel,

requested the court to give the following instructions to the jury on behalf of the defendant, with the court's memo. thereon, to wit:

Defendant's instructions to jury.

GARBER vs. INS. CO. } Deft.'s instructions.

The jury is instructed that the provision in the policy of insurance sued on, that if the person whose life was thereby insured should, between the first of July and the first of November, reside in those parts of the United States which lie south of the 33rd degree of north latitude, excepting California, without the consent of the company (here defendant) previously given in writing, the policy should be null and void, amounts in legal effect to a warranty by the parties in whose favor said policy was issued that said Garber should not reside in such prohibited district during the prohibited months named, or any part thereof, without the written permission specified. And it is admitted by the parties to this cause that said Garber did reside, during the months from July 1st to November 1st, 1872, within the prohibited district—that is to say, at New Orleans, Louisiana. If the jury find the written permis-
49 sion of the defendant had not been previously obtained for him so to reside there, the plaintiff cannot recover in this action, and the jury will find for the defendant.

Refused.

2. An omission by the assured to make known to the insurer any fact material to the risk at the time of effecting the contract of insurance or renewing the same by payment of renewal premium after the same had become past due, or by payment of renewal premium after any express condition had been broken by the assured and not waived, which material fact was then, at time of effecting the contract or so renewing the same, within the knowledge of the assured, avoids the policy and no recovery can be had thereon. The jury is to determine the materiality of any such fact so omitted to be made known, but the jury are to deem any such fact material which they may find from the evidence would, if made known to the insurer, have affected his estimate of the character and degree of the risk.

Refused, except as given in court's charge.

3. Where, under the previous instructions, it becomes the duty of the assured to communicate to the insurer any particular fact or facts material to the risk, such assured person cannot in law be allowed to say that he or she was ignorant of such material fact or facts, if by the exercise of ordinary perception and intelligence, under the circumstances, he or she would have learned and understood such fact or facts to then be existing.

Refused, except as given in court's charge.

4. It is admitted in this cause that Mr. Garber, whose life was insured, had resided in New Orleans, Louisiana, from July 1, 1872, to Novem-
50 ber 1st, 1872, without the written permission of the company, and that this was contrary to the express conditions of the policy sued on. If, under the circumstances, the jury believe from the evidence that Mr. Garber became seriously ill of yellow fever at New Orleans early in November, 1872, and of this illness died in the forenoon of November 11, 1872, and that the plaintiff paid or caused to be paid the renewal premium to the defendant or its agent on the morning of Novem-

ber 11th, 1872, without communicating the fact of such illness of Mr. Garber at the time of such payment, then the jury is instructed that the admitted violations of the policy as to such residence in the prohibited district were not waived by defendant by reason of any such payment received, and the jury will find in this action for the defendant.

Refused, except as given in court's charge.

5. It is admitted by the parties that Charles H. Garber resided at New Orleans, Louisiana, from July 1st, 1872, to November 1st, 1872, without the written permission of the defendant, and this was contrary to the express condition of the policy sued on, and the court instructs the jury that before they can find any waiver by the defendant of this condition by reason of the receipt of the premium on November 11, 1872; if the jury believes from the evidence that said Garber was then ill of yellow fever, and of which he shortly thereafter died, the jury must further find that the fact of this illness of Garber was communicated to the defendant before or at the time of the payment of said premium.

Refused, except as given in court's charge.

Which instructions and propositions of law were refused by the court, and as the same were severally refused by the court the defendant
51 by its counsel then and there excepted to the action of the court in that behalf.

Court's charge to jury.

And thereupon the court, by the circuit judge, of its own motion, gave the following charge to the jury:

GENTLEMEN OF THE JURY: On the 5th day of November, 1869, the defendant, The Globe Mutual Life-Insurance Company of New York, issued, at its St. Louis agency, the policy now sued on, by which it insured the life of the plaintiff's husband, for her sole use, on certain conditions, for the sum of five thousand dollars. The company defends the action brought to recover the sum upon two special grounds—

First. Because Mr. Garber resided within the prohibited district of the country, contrary to the terms of the policy.

Second. Because the premium which fell due November 1st, 1872, was not paid when it fell due.

It is undisputed upon the testimony that Mr. Garber was taken sick in New Orleans about the 6th or 7th day of November, 1872, and died of the yellow fever on the 11th of November of that year, about eleven and one-half o'clock a. m.

In the latter part of October, 1872, the agency of the company at St. Louis received from the home office of the company a notice directed to Mr. Garber that the premium on the policy would become due on the first day of November; and there is evidence that on the last day of October, or the first day of November, the agents of the defendant at St. Louis directed this notice to the assured at New Orleans; and Mrs. Garber testified that this notice was received there by her on or about November fourth, at New Orleans. On the 10th day of November a telegram was sent by Mrs. Garber from New Orleans to a Mr. Warne, at St. Louis, directing the latter to go to the company's agency in St.
52 Louis (at which the policy was issued, and which had collected all the previous premiums) and pay the premiums. Accordingly, on the morning of the eleventh of November, Mr. Warne called at the office of the company and, about nine o'clock a. m., paid the premium and received a renewal receipt, renewing the policy for the year from

the first of November, 1872. I have not gone into the details as to how this was collected by the boy. Whatever the boy did was communicated to the officers of the company fully and directly when they came in; so that, in effect, it is the same as if Mr. Warne had paid the money to them. Mr. Warne did not know Mr. Garber was then sick, and did not, of course, state that fact to the company. On the other hand, the company, at the time it received the premium, did not make any inquiries concerning the health of the assured. In a short time the agents at St. Louis became aware of the death of Mr. Garber, and the circumstances, and communicated them by letter to the home company, and before hearing from it the agents included the amount in their semi-monthly report to the home company of November 15th. Before this report reached the home company the latter had telegraphed the St. Louis agency to return the premium and demand a surrender of the renewal receipt. Shortly afterwards the agency here tendered to Mr. Warne the amount of the premium, and demanded a return of the renewal receipt, but the tender was not received nor the receipt returned. With this brief reference to some of the undisputed facts of the case, we now come to instruct you in reference to the law as to the two special defences relied on by the company.

First. As to the residence within the prohibited district. The
53 policy, which is the contract between these parties and by which they must be governed, contains, among other things, the following: That if between the first of July and the first of November the assured shall reside south of the thirty-third degree of north latitude, without the consent of the company given in writing, the policy shall be null and void. The plaintiff admits that Garber did reside in New Orleans, between the 1st of July and the 1st of November, 1872, without the written consent of the company. This is a complete defence, and the plaintiff cannot recover unless this provision of the policy was waived by the action of the company or its authorized agents. If you believe from the evidence that the officers of the company transacting all the business of the company respecting this policy knew that Mr. Garber had been and was residing in New Orleans from July to November, 1872, in violation of the conditions of the policy as to the place of residence, and received the premium on the 11th day of November, with such knowledge, and issued a renewal receipt, then this ground of defence fails. But if the company received this premium without knowledge that the policy had been violated in this respect, then this defence is made out, and the plaintiff cannot recover. So that under this instruction the only thing for you to decide is whether this premium, which was paid on the 11th day of November, was received by the company's agents with the knowledge on their part that the condition of the policy now relied upon as a defence had been broken. If they knew that Mr. Garber had been and was residing there in violation of the terms of the
54 policy, and with this knowledge received that money, then this company is estopped from setting up this defence; but if they received it without the knowledge that the condition of the policy was violated in this respect; if they did not know that he was residing there contrary to the condition or the terms of the policy, and received the money in ignorance of it, then, as the plaintiff by the replication admits that Garber was residing there in violation of the terms of the policy, there can be no recovery.

Second. As to the defence arising out of the non-payment of the premium on the first day of November, 1872. It is admitted that payment of the premium was not made until November 11th, but the

plaintiff also claims that this condition was waived by the company. She claims that the company by its general course of dealing, giving thirty days' time in which to pay premiums generally, and by its practice in respect to this particular policy, that the company waived payment of the premium to a period beyond the time when it was actually paid, on November 11th. Evidence has been given to show that the company's agency in St. Louis was in the habit of giving parties thirty days in which to make payment of their premiums. Whether this is satisfactorily established to be the general practice of this company in this respect at St. Louis is for you to determine. As respects this particular policy, evidence has been given to show that the premium due November 1st, 1870, was paid by note, and the premium due November 1st, 1871, was paid by a note December 14th, 1871, a month and fourteen days after it was due, which note was collected by the St.
55 Louis agents of the company from Mr. Garber at New Orleans in July, 1872. In respect to the premium due November the first, 1871, a letter has been introduced in evidence from the company's officers at St. Louis, addressed to Mr. Garber at New Orleans, dated St. Louis, November 3rd, 1871, calling attention to the premium due on the first of that month, requesting payment, and concluding with these words, "Please reply at once, as receipts can be held only thirty days, and then at the risk of the assured."

If you find from all the evidence that the company, by its general course of dealing and by its particular course of dealing with Mr. Garber, waived prompt payment of the premium, and led him to believe that he could have thirty days after the first of November to pay, then having received the premium within the thirty days, this ground of defence fails. If, however, there was no such waiver of prompt payment, then the payment on the eleventh day of November would not be effectual to renew the policy, if Garber was then dangerously ill with yellow fever, and this fact was not disclosed to the company's agents to whom the premium was offered. That is all the law of the case, gentlemen. If you find for the plaintiff the amount will be five thousand dollars, with six per cent. interest from sixty days after the proofs of loss.

(The court to counsel.) When were they furnished?

Mr. DAY. They were furnished December 1st, which would be February first.

The COURT. The policy provides that it shall be payable sixty days after due notice and proof of death. By way of recapitulation, I
56 say if you find either that the defence based on the residence within the prohibited district, or the defence arising out of the non-payment of the premium on the first day of November, as above explained, is made out, then you will find a verdict for the company. If the time of payment, by reason of the general or the particular course of dealing in respect to this policy, was waived; if prompt payment was waived, if it was waived by their course of dealing, and Garber was led by the company's officers in charge of the St. Louis agency to suppose that he could have a longer period than the one in which payment was actually made, then, if it was made within such time as heretofore explained, it would be good, but if there was no such waiver of time of payment, then if the payment was made on the eleventh day of November, concealing the fact or not stating the fact that he was dangerously ill, then that payment would not be effectual or valid, and the plaintiff cannot recover.

And to the said charge and statement of facts by the court to the jury, and the several propositions therein announced by the court to the jury

as the law of the case, the defendant, by its counsel, then and there severally objected, and the court then and there overruled said objections of defendant; and to the action of the court in overruling defendant's several objections, and in giving said charge and declaring said propositions as the law of the case, defendant, by its counsel, then and there severally excepted.

And the jury having thereupon returned the verdict of record for the plaintiff, the defendant afterwards, to wit, October 6th, made the motion for a new trial in words & figures following, to wit: (See page No. 17 of this transcript.)

57 And the court having duly considered the same, afterwards, to wit, on October 7th, 1874, overruled the same, and to the action of the court in overruling said motion the defendant, by its counsel, then and there excepted.

And afterwards, to wit, on the same day, the defendant filed its motion in arrest of judgment in words and figures following, to wit: (See page No. 19 of this transcript.)

And the court having duly considered the same, overruled said motion in arrest of judgment, and to the action of the court in overruling said last-named motion the defendant, by its counsel, then and there excepted.

And defendant thereupon, and as often as said actions of the court occurred and said exceptions were made, asked that the same might be noted, and that this defendant's bill of exceptions might and may be allowed and made a part of the record herein, which is accordingly done.

JOHN F. DILLON, [SEAL.]
Circuit Judge.

We have examined the foregoing bill of exceptions, and believe the same to be correct.

Oct. 8th, 1874.

CLINE, JAMISON & DAY.

And afterwards, to wit, at said last-mentioned term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case on Wednesday, the 28th day of October, A. D. 1874.

Writ of error granted.

ELIZA GARBER, PLAINTIFF,
vs.
GLOBE MUTUAL LIFE-INSURANCE CO., DEFT. } No. 138. Removed from circuit court of St. Louis County.

58 This day comes the defendant, by its attorney, John W. Noble, esquire, and presents a writ of error to remove this case to the Supreme Court of the United States, and a citation directed to said plaintiff, citing and admonishing her to be and appear at the next term of said Supreme Court in the year 1875, and thereupon said writ of error is allowed and the citation signed by the judge.

And afterwards, to wit, in vacation of said circuit court, on Monday, the 2nd day of November, A. D. 1874, the following further proceedings were had in said case, to wit:

Bond presented and filed.—Supersedeas granted.

ELIZA GARBER, PLAINTIFF,
vs.
THE GLOBE MUTUAL LIFE-INSURANCE CO., deft.

138. Removed from circuit court of St. Louis County.

This day comes the defendant, by its attorney, and presents to the honorable Samuel Treat, one of the judges of this court, the bond required on the suing out of the writ of error herein, and said judge, having approved the said bond, now orders that a supersedeas be granted staying all further proceedings on the judgment hereinbefore rendered.

And said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents, that we, The Globe Mutual Life-Insurance Company of New York, as principal, and Pliny Freeman & William A. Brawner are held and firmly bound unto Eliza Garber in the full and just sum of seven thousand dollars to be paid to the said Eliza Garber, her heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

59 Sealed with our seals and dated this second day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at the September term, A. D. 1874, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Eliza Garber, plaintiff, and The Globe Mutual Life-Insurance Company of New York, defendant, judgment was rendered against the said defendant in the sum of five thousand five hundred dollars and costs, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit and a citation directed to the said Eliza Garber, plaintiff, citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October, A. D. 1875:

Now the condition of the above obligation is such, that if the said defendant shall prosecute said writ to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

PLINY FREEMAN, *Prest.* [SEAL.]
PLINY FREEMAN. [SEAL.]
WM. A. BRAWNER. [SEAL.]

Sealed and delivered in presence of—
[SEAL.] JAMES R. HOSMER.

Approved by—

SAMUEL TREAT, *Judge.*

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

Pliny Freeman, being duly sworn, deposes and says that he lives in the county of Queens, State of New York, and that he is worth fourteen thousand dollars over and above all his just debts and liabilities in real estate and property exempt from execution.

PLINY FREEMAN.

60 Subscribed and sworn to before me this 29th day of October, 1874.

JOHN A. OSBORN,
U. S. Commissioner, Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this the 29th day of October, A. D. 1874, personally appeared before me Pliny Freeman, to me known to be the person who executed the foregoing written instrument, and made oath that he executed the same as president of and for and on behalf of the Globe Mutual Life-Insurance Company of New York, and that he was duly authorized to execute the said bond or written instrument, and that the seal affixed to his name is the proper and genuine seal of said company.

JOHN A. OSBORN,
U. S. Commissioner, Southern District of New York.

61 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in case No. 138, of Eliza Garber, plaintiff, against The Globe Mutual Life-Insurance Company of New York, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 13th day of November, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.]

AUSTIN DRAKE,
Clerk of said Court,
By H. C. GEISBERG,
Deputy.

(Indorsed:) No. 138. United States circuit court, eastern district of Missouri. Eliza Garber, plaintiff, against The Globe Mutual Life-Insurance Company of New York, defendant. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 262. The Globe Mutual Life-Insurance Company of New York, plaintiff in error, vs. Marcus A. Wolff, executor of Eliza Garber, deceased. E. Missouri C. C. U. S. Filed 28' December, 1874.